

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

Civil Action No. 8:12-cv-00359

MICHAEL J. TRACY, an individual, and TRACY BROADCASTING CORPORATION, a  
Nebraska Corporation,

Plaintiffs,

v.

TELEMETRIX, INC.; CONVEY COMMUNICATIONS, INC.; WILLIAM W. BECKER;  
LARRY BECKER; GAYLE BECKER; GARY BROWN; BECKER CAPITAL  
MANAGEMENT, LLC; GREEN EAGLE COMMUNICATIONS, INC.; GREEN  
EAGLE NETWORKS, INC.; JOHN AND JANE DOE(S) 1 – 15; and JOHN DOE  
CORPORATIONS 1 – 10,

Defendants.

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**NOTICE OF REMOVAL OF CIVIL ACTION FROM THE  
DISTRICT COURT FOR SCOTTS BLUFF COUNTY, NEBRASKA**

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PLEASE TAKE NOTICE that TELEMETRIX, INC.; CONVEY COMMUNICATIONS, INC.; WILLIAM W. BECKER; and GARY BROWN; (collectively “Defendants”) file this Notice Of Removal Of Civil Action (“Notice”), and hereby remove, to this Court, the state court action identified below.

1. On September 18, 2012, plaintiffs Michael J. Tracy and Tracy Broadcasting Corporation (Plaintiffs”) received an Order from the underlying state court accepting for filing their Amended Complaint against Defendants (“Amended Complaint”) in the District Court for Scotts Bluff County, Nebraska, identified as Case No. CI12-239 (“State Court Action”). Plaintiffs’ Amended Complaint includes, for the first time, several claims for relief based upon

federal statutes. A true and correct copy of the Amended Complaint in the State Court Action is attached hereto and found in Attachment 3.

2. This court has original subject matter jurisdiction over this action, exclusive of the courts of the states, pursuant to 28 U.S.C. § 1331. This action may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446 because the Amended Complaint contains claims for relief based upon the laws of the United States.

3. Undersigned counsel has discussed the removal of the State Court Action with counsel for the remaining defendants LARRY BECKER; GAYLE BECKER; BECKER CAPITAL MANAGEMENT, LLC; GREEN EAGLE COMMUNICATIONS, INC.; and GREEN EAGLE NETWORKS, INC. Undersigned counsel certifies that all defendants to the State Court Action seek removal to the U.S. District Court.

4. This Notice is timely under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days of the service of the Amended Complaint on Defendants.

5. Defendants do not waive, and hereby reserve, their individual and collective rights to seek an adjudication of any and all jurisdictional, substantive, and/or procedural issues in this case. This reservation includes but is not limited to Defendants' right to file one or more motions under Rule 12(b) of the Federal Rules of Civil Procedure. All defenses, offsets, counterclaims, and other rights are similarly reserved by Defendants.

6. Pursuant to 28 U.S.C. § 1446(a), filed herewith is a copy of all process, pleadings, and orders served upon Defendants in the State Court Action as of the date of this Notice. See Attachments 1, 2, and 3 hereto.

7. This Notice is filed pursuant to 28 U.S.C. § 1446. In compliance with § 1446(d), Defendants will promptly file a copy of this Notice with the Clerk of the District Court for Scotts Bluff County, Nebraska and will give written notice of this removal to all adverse parties herein. A true and correct copy of the Notice To Adverse Parties Of Removal to be filed in the state court action is attached hereto as Attachment 4.

8. As required by NECivR 40.1(b), Defendants request trial of this action in Omaha, Nebraska.

WHEREFORE, Defendants respectfully request that the state court action be removed to this Court, and that no further proceedings relating to this matter be permitted in the courts of the State of Nebraska.

Dated this 8<sup>th</sup> day of October, 2012.

*/s/ Philip M. Kelly*

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Philip M. Kelly, NSBA #15427  
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a professional corporation  
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Telephone: (308) 632-7191  
*Attorney for Defendants Telemetrix, Inc., Convey  
Communications, Inc., William Becker, and Gary Brown*

**CERTIFICATE OF MAILING**

I hereby certify that on October 8, 2012, I electronically filed the foregoing **NOTICE OF REMOVAL OF CIVIL ACTION** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

James L. Zimmerman  
ZIMMERMAN LAW FIRM P.C., L.L.O.  
1615 Second Avenue  
P.O. Box 700  
Scotts Bluff, NE 69363-0700

And I hereby certify that I have mailed by U.S. Postal Service, the documents to the following non-CM/ECF parties:

K.C. Groves  
Benjamin J. Larson  
IRELAND STAPLETON PRYOR & PASCOE, PC  
1675 Broadway, Suite 2600  
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Daniel K. Calisher  
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Denver, CO 80209

*/s/ Philip M. Kelly*

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Philip M. Kelly